

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

CARLTON R. COCKRELL, )  
                          )  
Petitioner,           )  
                          )  
v.                     ) Case No. 4:18-cv-02089-KOB-HNJ  
                          )  
JEFF DUNN,           )  
                          )  
Respondent.           )

**MEMORANDUM OPINION**

The magistrate judge entered a report on July 21, 2021, recommending the court dismiss Petitioner Carlton R. Cockrell’s petition for a writ of habeas corpus as successive pursuant to 28 U.S.C. § 2244(b)(3)(A). (Doc. 12). On August 4, 2021, Cockrell filed objections to the report and recommendation. (Doc. 15).

Cockrell’s objections inaccurately portray the magistrate judge’s report and recommendation. Cockrell argues that the report “reflects that even when pleading factual innocence, procedural default will preclude a habeas petition from being considered on the merits,” resulting in “[b]urying the truth in order to merely adhere to protocol.” (Doc. 15 at 2). Cockrell’s depiction of the report and recommendation misses the mark. Nothing in the magistrate judge’s report prohibits Cockrell’s petition “from being considered on the merits” *after* he has petitioned the Eleventh Circuit Court of Appeals for authorization to file a successive petition pursuant to §

2244(b)(3)(A). In fact, the magistrate judge recommended that the court dismiss Cockrell's case without prejudice to allow Cockrell to do just that. (Doc. 12 at 6).

Moreover, Cockrell fails to acknowledge Eleventh Circuit case law cited in the report and recommendation squarely rejecting the argument he makes in his petition and again here in his objections. (*See* Doc. 12 at 5, citing *Bowles v. Sec'y, Fla. Dep't of Corr.*, 935 F.3d 1176, 1182 (11th Cir. 2019); *In re Lambrix*, 776 F.3d 789, 796 n.4 (11th Cir. 2015) ("There is no 'fundamental miscarriage of justice' exception to a state prisoner's obligation to satisfy the statutory criteria in § 2244(b)(2)(B) in order to obtain our leave to file a second or successive § 2254 petition.")).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and Cockrell's objections, the court **ADOPTS** the magistrate judge's findings and **ACCEPTS** his recommendation. Cockrell's petition for a writ of habeas corpus is due to be dismissed without prejudice for lack of jurisdiction because he has not received authorization from the Eleventh Circuit to file a successive habeas petition. *See* 28 U.S.C. § 2244(b)(3)(A).

This court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a "petitioner must demonstrate that reasonable

jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that "the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds Cockrell's claims do not satisfy either standard.

The court will enter a separate Final Order.

DONE and ORDERED this 17<sup>th</sup> day of August, 2021.

  
KARON OWEN BOWDRE  
UNITED STATES DISTRICT JUDGE